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|----------------------------------|---|-------------|
| In re Application of | : | |
| Connor | : | ON PETITION |
| Application No. 09/749,215 | : | |
| Filed: December 27, 2000 | : | |
| Attorney Docket No. 10599-367001 | : | |

This is a decision on the petition under 37 CFR 1.181, filed June 30, 2006 (certificate of mailing date June 27, 2006), requesting withdrawal of the holding of abandonment.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely reply to the March 16, 2005 non-final Office action, which set an extendable three month period for reply. No extensions of time or reply being received, the above-identified application became abandoned on June 17, 2005. The filing of the present petition precedes the mailing of A Notice of Abandonment.

An allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would

have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

A review of the record indicates no irregularity in the mailing of the March 16, 2005 non-final Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner is not practicing at the then correspondence address of record. Practitioner's address and the address listed at the bottom of the petition is:

Fish & Richardson, P.C.
225 Franklin Street
Boston, MA 02110

The March 16, 2005 non-final Office action was mailed to a Fish & Richardson office in San Diego, CA. The fact that practitioner did not receive the March 16, 2005 non-final Office action at the Boston, MA address does not establish non-receipt. It is noted that Ms. Anne M. Micco, the Docket Administrator in the Patent Services Department, works at the Boston, MA address. Therefore, the evidence of non-receipt has been provided from individuals who do not work where the March 16, 2005 non-final Office action was mailed.

A statement from the practitioners at the San Diego, CA address is required. They can provide a proper showing of non-receipt.

The address listed on the petition differs from the correspondence address of record and no change of address appears to have been filed. A courtesy copy of this decision will be mailed to the address listed on the petition. All future correspondence pertaining to this application will be mailed to the correspondence address of record.

Further correspondence with respect to this matter should be addressed as follows:

| | |
|-----------------|---------------------------|
| By mail: | Mail Stop PETITION |
| | Commissioner for Patents |
| | Post Office Box 1450 |
| | Alexandria, VA 22313-1450 |

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
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By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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Office of the Deputy Commissioner
for Patent Examination Policy

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